



September 26, 2000

Ms. Mary E. Reveles
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR2000-3704

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139233.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for all files, records, and any other documents pertaining to a specified individual. The Fort Bend County Sheriff's Department (the "department") received a request for all files, records, and any other documents in the possession of the department and the Fort Bend County Jail pertaining to the same specified individual. The Fort Bend County Attorney's Office has requested a decision on behalf of the district attorney and the department. The district attorney states that the court records in Exhibits C, D, F, and G are available to the public, and the department asserts that Exhibit D is available to the public. Although the district attorney and the department acknowledge that the court documents are available to the public in the official district clerk's record, we believe that section 552.022(a)(17) requires the district attorney and the department to release the court records to the requestor. *See* Gov't Code § 552.022(a)(17) (providing that information contained in a public court record is public information); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). We have marked an additional court document in the department's Exhibit F which must be released pursuant to section 552.022(a)(17). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of the requested district attorney internal file and the complete jail record of the specified individual.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The district attorney argues that its internal file is excepted under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. The district attorney explains that the specified individual was convicted and that his appeal is pending with the Court of Criminal Appeals. Further, the district attorney alleges that the requested documents are being utilized in preparation of the criminal appeal. Accordingly, we find that release of the district attorney's internal file would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 177. Thus, with the exception of the basic front page offense and arrest information, the district attorney may withhold the internal file, Exhibits E, H, I, J, and K, from disclosure based on section 552.108(a)(1).² We note that the district attorney has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

With regard to the individual's jail record, the department claims that the information in Exhibits E and F are excepted under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) provides the following:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). In order to withhold internal records and notations, a law enforcement agency must demonstrate how release of the information would unduly interfere with law enforcement and crime prevention unless the records supply this explanation on their face. See *Open Records Decision No. 508* at 2 (1988). You advise us that the department was not the investigating agency with regard to the crime for which the individual was convicted. Thus, you state that the department does not have an investigation file but has jail records pertaining to the incarceration of the individual. The documents consist of the

²Having found the district attorney internal file to be excepted under section 552.108, we need not address the district attorney's claim under section 552.103. Generally, basic information may not be withheld from public disclosure under section 552.103. *Open Records Decision No. 362* (1983).

individual's booking and bail information as well as medical information. Neither the county nor the department has explained how release of the jail records would interfere with the pending appeal. Further, the district attorney, who has the prosecutorial interest, has not explained how release of these records would interfere with the pending appeal. Thus, we conclude that Exhibits E and F may not be withheld from disclosure under section 552.108(b)(1) of the Government Code.

The department also claims that the jail records are excepted under section 552.103 of the Government Code. Section 552.103(a) provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

However, the department is not a party to the pending appeal and, therefore, section 552.103 does not apply to the jail records. Accordingly, the department may not withhold the jail records under section 552.103 of the Government Code.

The department also asserts that medical records in Exhibit F are excepted under section 552.101 and the Medical Practice Act ("MPA"), section 159.002(b) of the Occupations Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 159.002(b) provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Thus, access to medical records is governed by provisions outside the Public Information Act. *See* Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. Occ. Code §§ 159.002, .003. Medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). Based on your representations that the documents in Exhibit F are the individual's medical records, we agree that the department may withhold the information under section 552.101 and the MPA.

We also note that the jail records contain criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of

the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411 of the Government Code and must be disclosed. *See* Gov't Code § 411.082(2)(B). Thus, the department must withhold the CHRI in Exhibit E which we have marked.

Section 552.101 also encompasses common law and constitutional privacy. In this instance, release of some of the submitted information would implicate the privacy interest of the individual. However, section 552.023 of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. In this instance, the requestor is the attorney of the individual whose privacy is being protected. Thus, the individual's authorized representative has a special right of access to the information protected under section 552.101 and common law and constitutional privacy. However, if the department receives a request for the same information from someone other than the individual's authorized representative, the department must request another ruling from this office.

In conclusion, we find that the district attorney may withhold its internal file under section 552.108(a)(1) but must release court documents under section 552.022(a)(17). Although the jail records are not excepted under sections 552.108 or 552.103, we conclude that the documents in Exhibit F must be withheld under section 552.101 and the MPA. The department must also withhold the marked CHRI in Exhibit E. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

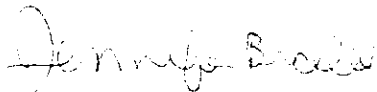
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: 139233

Encl: Marked documents

cc: Mr. Logene L. Foster
The Foster Law Firm
P.O. Drawer 618
Sugar Land, Texas 77487
(w/o enclosures)